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Supreme Court, U.S.
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CLERK

No.

In the Supreme Court of the United States

Term, 198

JOHN JOSEPH GRABNER, III,
Petitioner

vs.

LAWRENCE CONTI AND ANTELINE PENDEL,
Respondents

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA

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STATEMENT OF QUESTION PRESENTED FOR REVIEW

Do the First, Fifth, Ninth and Fourteenth Amendments of the United States Constitution prevent a state whose own constitution and statutes provide a remedy for every injury from refusing all remedies against a Police Chief who, inter alia, breaks up Petitioner's home, causes his wife to leave and not return by threats and physical abuse, makes her pregnant and forces her to abort and challenges Petitioner/husband to do anything about it?

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IN THE SUPREME COURT OF THE UNITED STATES

JOHN JOSEPH GRABNER, III

Petitioner

v.

LAWRENCE CONTI AND ANTELINE PENDEL,

Respondents

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

John Joseph Grabner, III respectfully presents this petition for allowance of certiorari to the Superior Court of Pennsylvania.

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW

1. On November 30, 1984 and January 21, 1985 Judge (now President Judge) Robert C. Reed entered the attached orders in the Court of Common Pleas of Beaver County, Pennsylvania, Civil Division at No. 2614 of 1981 and No. 2613 of 1981. So far as Petitioner can discover, the opinions are unreported.

2. The Superior Court of Pennsylvania affirmed on December 20, 1985 and entered the attached order and unreported opinion at Numbers 44, 45 and 223 Pittsburgh 1985 and

3. Refused Petitioner's timely presented and here attached "Application for Reargument" on February 14, 1986 by the attached letter order.

4. A timely Application for Appeal to the Supreme Court of Pennsylvania was denied, without opinion, and by the attached letter order at No. 129 W.D. Allocatur Docket 1986 on January 5, 1987.

JURISDICTION

Jurisdiction to petition the United States Supreme Court for certiorari to the Superior Court of Pennsylvania is founded upon 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

Article 1, Section 1 of Pennsylvania Constitution: Inherent Rights of Mankind.

Section 1. "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Article 1, Section 11 of Pennsylvania Constitution: Courts to be open; suits against the Commonwealth.

Section 11. "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct."

Article 1, Section 20 of Pennsylvania Constitution: Right of Petition.

Section 20. "The citizens have a right in a peaceable manner to assemble together for the common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance."

Constitutional Provisions, Statutes and Ordinances Involved

Article 1, Section 26 of the Pennsylvania Constitution: Subdivisions: No. Discrimination by Commonwealth or its Political Subdivisions.

Section 26: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

First Amendment to United States Constitution.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Fifth Amendment to United States Constitution.

"No person shall be—deprived of life, liberty, or property, without due process of law:—"

Ninth Amendment to United States Constitution.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment to United States Constitution.

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the Unites States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

42 Pa. C.S.A. 5101(a).

"Remedy to exist for legal injury.

(a) General rule—Every person for a legal injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

23 Pa. C.S.A. 102 (The Pennsylvania Divorce Code of 1980).

Section 102. Legislative findings and intent.

(a) The family is the basic unit in society and the protection and preservation of the family is of paramount public concern.

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED

1. Petitioner was and still is a married man who at all times here relevant lived with his wife in the city of Beaver, Beaver County, Pennsylvania.

2. Lawrence Conti is the Police Chief of nearby MONACA Borough in the same county and Anteline Pendel is Petitioner's sister-in-law (the sister of his wife).

3. Petitioner filed in the Court of Common Pleas of Beaver County TWO Civil Division actions, both founded upon

A. his own personal experiences with Respondents and

B. information obtained in sworn oral depositions taken from his wife after proper notice of this event was given Respondents.

4. One action is in equity at No. 2613 of 1981 and

A. after detailing the factual conduct about which Petitioner complains

B. requests Respondents be ordered to stop what they are doing.

5. The other action filed at No. 2614 of 1981

A. incorporates the facts of the equity case and

B. requests money damages.

6. Rather than repeat verbatim what these state pleadings assert, the equity complaint is filed as part of this Petition (26a) and this Honorable Court requested to read Respondent's conduct directed against Petitioner and his wife.

7. The state courts advised Petitioner in the attached opinions and orders that they did not intend to intercede or protect him against Respondents' conduct so

8. he now respectfully requests the United States Supreme Court to come to his aid.

REASONS FOR THE ALLOWANCE OF THE WRIT

Do the First, Fifth, Ninth and Fourteenth Amendments of the United States Constitution prevent a state whose own constitution and statutes provide a remedy for every injury from refusing all remedies against a Police Chief who, inter alia, breaks up Petitioner's home, causes his wife to leave and not return by threats and physical abuse, makes her pregnant and forces her to abort and challenges Petitioner/husband to do anything about it?

9. This court has advised "marriage is one of the basic civil rights of man; fundamental to our very existence and survival." *Zamlocki v. Redhail,* 1978, 434 U.S. 374, 383, 98 S.Ct. 673, 679, and declared in

10. *Linn v. United Plant Guard Workers of America,* 1966, 383 U.S. 53, 64, F.N. 6, 86 S.Ct. 657, 664, F.N. 6 that "The fact that the Board has no authority to grant effective relief aggravates the state's concern since the refusal to redress an otherwise actionable wrong creates disrespect for the law and encourages the victim to take matters into his own hands. The function of libel suits in preventing violence has long been recognized".

11. The Pennsylvania courts do not intend, at least in this case, to help Petitioner preserve and protect his marriage and, sub silento, appear to invite him to take the self-help which courts were organized to prevent. *Bush v. Lucus,* 1983, 462 U.S. 367, 374, F.N. 10, 1035 S.Ct. 2404, 2409, F.N. 10:

In *Marbury v. Madison,* 1803, 1 Cranch 137, 163, 2 L.Ed. 60, Chief Justice Marshall invoked the authority of

Blackstone's commentaries in support of this proposition. Blackstone had written: "It is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded. It is a settled and invariable principle in the laws of England that every right, when withheld, must have a remedy and every injury its proper redress" and

12. In Pennsylvania, marriage is founded on contract law. *Estate of Gavilla,* 1980, 490 Pa. 535, 540, 417 A.2d 168, 171; *McGrath's Estate,* 1935, 319 Pa. 309, 314, 179 A. 599, 602; *Gargis Estate,* 1977, 474 Pa. 237, 378 A.2d 307 and

13. Intentional interference in contract rights is actionable. *Adler, Barish, etc. v. Epstein et al.,* 1978, 482 Pa. 416, 393 A.2d 1175, but

14. A marriage contract, on which preservation of organized society and civilization is founded, has now been carved out as an exception.

15. In Pennsylvania, intentional infliction of emotional distress is actionable. *Bartanus v. Lis,* 1984, 332 Pa. Superior Ct. 48, 480 A.2d 1178 (Termination of right to sue for alienation of son's affection does not forclose claim for intentional infliction of emotional distress) but

16. not when a married man in concerned.

17. In Pennsylvania, continuous tort can be enjoined. *Rouse Philadelphia, Inc. v. Ad Hoc '78,* 1979, 274 Pa. Superior Ct. 54, 69, 417 A.2d 1248, 1257 (use of obscenities, threats, "continued trespass," "conduct which is violent, abusive and illegal," "a pattern of violent, abusive behavior") but

18. not if the person who complains is a married man.

19. Section 684 of the Restatement of Torts 2d proscribes "causing one spouse to separate from or refuse to return to the other spouse" especially when "emotional distress" or "sexual intercourse" is involved (see subsection "j" on "damages") but

20. Although Pennsylvania courts usually agree with the restatement, they decline when the injured person is a married man.

21. Pennsylvania courts always condemn misconduct of a police officer and hold him to a higher conduct standard both on and off duty, especially when he fools with someone else's wife or engages in romance. *Jones v. City of Pittsburgh, Department of Fire,* 1984, 505 Pa. 25, 476 A.2d 895 (citing cases); *Faust v. Police Civil Service Commission of the Borough of State College,* 1975, 22 Pa. Commonwealth Ct. 123, 347 A.2d 765; *Fabio v. Civil Service Commission of the City of Philadelphia,* 1980, 489 Pa. 309, 414 A.2d 82; *Oudinot v. Unemplogment Compensation Board of Review,* 1983, 78 Pa. Commonwealth Ct. 150, 467 A.2d 84; *Kazmarek v. New Bethlehem Borough Council,* 1984, 84 Pa. Commonwealth Ct. 19, 478 A.2d 514; *Brown v. Commonwealth of Pennsylvania, Pennsylvania State Police,* 1984, 85 Pa. Commonwealth Ct. 643, 482 A.2d 1360; *Tomkiel v. Tredyffrin Township Board of Supervisors,* 1982, 64 Pa. Commonwealth Ct. 418, 440 A.2d 690, but

22. Give no private remedy when a married man is involved.

23. Pennsylvania courts enjoin improper police activity. *Dombrowski v. Philadelphia*, 1968, 431 Pa. 199, 245 A.2d 238 (improper evictions) but

24. not when a married man complains.

25. Petitioner respectfully argues that the above cited Pennsylvania constitutional and statute provisions mandate that state to act in preservation of marriage and stop Respondents dead in their tracks, but if the state refuses relief, this court should provide it.

A. Petitioner can find no case like this one but he respectfully suggests that federal decisions in the no remedy required, but if provided, it must be fairly enforced area are relevant. For example—

(1) "Almost a century ago, the court held that the constitution does not require states to grant appeals as of right to criminal defendants seeking to review alleged trial errors (case omitted). Nonetheless, if a state has created appellate courts as 'an integral part of the system for finally adjudicating the guilt or innocence of a defendant (case omitted), the procedures used in deciding appeals must comport with the demands of the due process and equal protection clauses of the constitution.' " *Evitts v. Lucey*, 1985, 469 U.S. 387, 393, 105 S.Ct. 830, 834 (Due process requires "fairness between the state and the individual dealing with the state, regardless of how other individuals in the same situation may be treated" whereas equal protection involves class distinctions, 469 U.S. at 405, 105 S.Ct., at 841) and

Reasons for the Allowance of the Writ

(2) Although not required to provide an administrative procedure, the executive who does cannot deviate from the protections provided. *Morton v. Ruiz,* 1974, 415 U.S. 199, 235, 94 S.Ct. 1055, 1074; *Service v. Dulles,* 1934, 354 U.S. 363, 77 S.Ct. 1152; *Accardi v. Shaughnessy,* 1954, 374 U.S. 260, 74 S.Ct. 499 and

(3) *Logan v. Zimmerman Brush Co.,* 1982, 455 U.S. 422, 102 S.Ct. 1148 ("a state tort claim is a species of 'property' protected by the due process clause." Right to court access can't be taken away by "at will" discretion of person to whom court has delegated authority and by a procedure into which a plaintiff has no input or control).

B. Petitioner also respectfully requests the following decisions have application to his present petition.

(1) When a state provides a defense to a tort cause of action, the provision must serve a state purpose and be rational and non-arbitrary. *Martinez v. California,* 1980, 444 U.S. 277, 282, 100 S.Ct. 553, 557 (absolute immunity to parole officer when released convict kills member of public).

(2) *Garrison v. State of La.,* 1964, 379 U.S. 64, 69, 85 S.Ct. 209, 213 (action in libel created to stop duels, self-help and breach of the peace).

(3) *Angle v. Chicago, St. P. M and O Ry.,* 1894, 151 U.S. 1, 19, 14 S.Ct. 240, 247 (legisla-

ture cannot condone what is illegal and make it legal; action for intentional interference in contract rights preserved on appeal, 151 U.S. at 10, 14 S.Ct. at 28).

(4) "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." *Brinker-Hoff-Faris Trust and Savings Co. v. Hill*, 1930, 281 U.S. 673, 682, 50 S.Ct. 451, 454 (state judges take away remedy to protect property; federal court will supply it. "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government," 281 U.S. at 681, 50 S.Ct. at 454.)

(5) *Hudson v. Palmer*, 1984, 468 U.S. 517, 523, 104 S.Ct. 3194, 3198 (right of petition "includes a reasonable right of access to the courts"); *California Motor Transport Co. v. Trucking Unlimited*, 1972, 404 U.S. 500, 508, 92 S.Ct. 609, 612 ("Certainly the right to petition extends to all departments of the government. The right of access to the courts is indeed but one aspect of the right to petition").

C. Way back in 1819, the sanctity of the marriage contract received United States Supreme Court attention in the Article 1, Section 10 discussions of the *Trustees of Dartmouth College v. Woodward*, 4 Wheaton 518 at 696 ("A man has just as good a right

to his wife, as to the property acquired under a marriage (697) contract. He has a legal right to her society and her fortune; and to divest such right without his default, and against his will, would be as flagrant a violation of the principles of justice, as the confiscation of his own estate. I leave this case, however, to be settled when it shall arise").

CONCLUSION

A. The court is respectfully requested to take judicial notice of the rapid deterioration of institutions and values since acceptance of the idea that everyone has a right "to do his own thing."

B. Institutions and leaders are the subject of disrespect and ridicule and few persons have any sense of responsibility in the now accepted quest for pleasure and individual indulgence.

C. People with the dreaded AIDS disease argue the federal constitution gives them an absolute right to have it and affirmatively resist a change in lifestyle or any steps to even be examined so other unwary and innocent folks can be protected.

D. Bank robbers, murderers and terrorists claim they are only political activists, so

E. It was not long until the most sacred vow of marriage was destroyed by so-called no-fault divorces with the subsequent break-up of the family, abandonment of faithful spouses and children and refusal to punish those third parties who cause the problems.

Conclusion

F. When Petitioner's counsel was in law school, a suggestion that a chief of police could do what he has here done to Petitioner and escape being called to account or even forced to stop, would have sounded like a book review of an off-beat novel (probably condemned as obscene) but

G. Now Petitioner is left without a remedy and even subject to Conti threats and physical retaliation when he complains.

H. The Commonwealth of Pennsylvania guarantees, both in its constitution and by its statutes, that there shall be no right without a remedy, but then carves out husbands as an exception.

I. Petitioner respectfully urges the United States Supreme Court to now advise this is not so and begin, by this decision, a return to the middle-class values that made this country great and set a standard for other countries to follow.

Respectfully submitted,
ALLEN N. BRUNWASSER
Attorney for Petitioner

APPENDIX

JOHN JOSEPH GRABNER, III
vs.
LAWRENCE CONTI and ANTELINE PENDEL
No. 2614 of 1981
Civil Action—Law

JOHN JOSEPH GRABNER, III
vs.
LAWRENCE CONTI and ANTELINE PENDEL
No. 2613 of 1981
Civil Action—Equity

Judge Robert C. Reed

MEMORANDUM & ORDER FILED
Filed November 30, 1984

PRELIMINARY OBJECTIONS—DEMURRER—CRIMINAL CONVERSATION—ALIENATION OF AFFECTIONS

Defendant filed preliminary objections in the nature of a demurrer to complaint which attempted to allege a cause of action based on torts of alienation of affections and criminal conversation. Plaintiff also seeks relief for the tort of "conduct unbecoming a police officer."

Held: Demurrer sustained and complaint dismissed. The torts of alienation of affection and criminal conversation have been abolished. "Conduct unbecoming a police officer" is not a tort and therefore not a basis for recovery.

Counsel for Plaintiff—Allen N. Brunwasser, Esq.

Counsel for Defendant Conti—Charles F. Bowers, Jr., Esq.

Counsel for Defendant Pendel—Roberta C. Higley, Esq.

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY PENNSYLVANIA

CIVIL ACTION—LAW
No. 2614 of 1981

JOHN JOSEPH GRABNER, III,
Plaintiff,

vs.

LAWRENCE CONTI and ANTELINE PENDEL,
Defendants.

CIVIL ACTION—EQUITY
No. 2613 of 1981

JOHN JOSEPH GRABNER, III,
Plaintiff,

vs.

LAWRENCE CONTI and ANTELINE PENDEL,
Defendants.

MEMORANDUM AND ORDER

Reed, J. November 30, 1984

Plaintiff filed the present actions wherein he alleges that defendant Conti, with the aid of defendant Pendel, plaintiff's sister-in-law, induced plaintiff's wife to leave him and that as a result she engaged in an adulterous relation-

ship with defendant Conti. Presently before the Court are defendant Conti's preliminary objections in the nature of motions to strike, motions for more specific pleading, and demurrer.

Although not specifically pleaded, the plaintiff is apparently attempting to establish a cause of action based upon alienation of affections, criminal conversation, Section 684 of the Restatement (Second) of Torts, and/or "conduct unbecoming a police officer," a novel theory which the plaintiff nevertheless urges us to adopt.

In support of the motion for demurrer; defendant Conti contends that since Pennsylvania no longer recognizes criminal conversation or alienation of affections as actionable offenses, the plaintiff has failed to set forth a cause of action upon which relief may be granted. We agree.

The common-law action for criminal conversation, which protected a party's right to consortium, was abolished by the Pennsylvania Supreme Court in *Fadgen v. Lenkner,* 469 Pa. 272, 365 A.2d 147 (1976). See also *Kyle v. Albert,* 28 Bucks 259 (1976).

Furthermore, the common-law tort for alienation of affections, which was often confused with criminal conversation, but nevertheless separate and distinct, was abolished in 1935 at 49 P.S. Sec. 170, which states:

> Sec. 170 Actions for alienation of affections abolished; exceptions.
>
> In all civil causes of action for alienation of affections of husband or wife, except in such cases where the defendant is a parent, brother or sister or a person formerly in loco parentis to the plaintiff's spouse, are hereby abolished: Provided, however, that this section

shall not apply to causes of action which have heretofore accrued. 1935, June 22 P.L. 450, Sec. 1; 1937, June 25 P.L. 2317, Sec. 1.

It is clear that defendant Conti does not fall within the class of people excepted from Section 170. Consequently, the plaintiff may not maintain a cause of action for alienation of affections against Conti.

Notwithstanding the status of the above mentioned torts, the plaintiff contends that his action is properly grounded upon Sec. 684 of the Restatement (Second) of Torts, which establishes a cause of action for "causing one spouse to separate from or refuse to return to the other spouse." Plaintiff asserts that this tort, separate and distinct from criminal conversation or alienation of affections, was expressly adopted by the Pennsylvania Courts in the case of *Acchione v. Acchione,* 376 Pa. 36, 101 A.2d 642 (1954). We disagree.

Acchione was clearly a suit for alienation of affections. The first sentence of the case reads. "This is an action in trespass for alienation of affections accusing the separation of plaintiff's husband from plaintiff." *Acchione* at 37, 643. Although the *Acchione* Court did make a general reference to several sections of the Restatement, including Sec. 684, it did not rely upon that section as a theory of recovery separate and distinct from alienation of affections as set out in the Restatement (Second) of Torts, Sec. 683. We are unaware of any Pennsylvania appellate jurisdiction which has either sustained a cause of action based upon Section 684 or distinguished that section from Section 683. As such we feel that by abolishing the tort of alienation of affections, the legislature effectively precluded all actions based upon either Section 683 or Section 684 of the Restatement (Second) of Torts.

Although not apparent from the complaint, the plaintiff now apparently urges the Court to create a new common-law cause of action based upon "conduct unbecoming a police officer." That request must be denied.

Because we have ruled in favor of defendant Conti's motion for demurrer, we need not address the remaining preliminary objections.

For the foregoing reasons, the following Order is entered.

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY PENNSYLVANIA

CIVIL ACTION—LAW
No. 2614 of 1981
JOHN JOSEPH GRABNER, III,
Plaintiff,
vs.
LAWRENCE CONTI and ANTELINE PENDEL,
Defendants.

CIVIL ACTION—EQUITY
No. 2613 of 1981
JOHN JOSEPH GRABNER, III,
Plaintiff,
vs.
LAWRENCE CONTI and ANTELINE PENDEL,
Defendants.

ORDER

Reed, J. November 30, 1984

Memorandum & Order, Nov. 30, 1984

NOW, this 30th day of November, 1984, defendant Conti's preliminary objection in the nature of a demurrer is hereby Sustained. The plaintiff's complaints against Lawrence Conti in trespass at No. 2614 of 1981, and in equity at No. 2613 of 1981, are hereby Dismissed.

BY THE COURT
s/Robert C. Reed

Order, Dec. 20, 1985

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

Nos. 44, 45, 223 Pittsburgh 1985
JOHN JOSEPH GRABNER, III,

Appellant

vs.

LAWRENCE CONTI AND ANTELINE PENDEL

ORDER

AND NOW, this 20th day of December, 1985, it is ordered as follows:

__X__ Order affirmed.
_____ Order reversed.
_____ Judgment affirmed.
_____ Judgment of Sentence affirmed.
_____ Judgment of Sentence reversed.
_____ Order vacated and lower court directed to proceed in accordance with opinion filed herewith.
_____ Order modified as set forth in opinion filed herewith.
_____ Costs to be taxed as provided by Chapter 27 of the Pa. R.A.P.
_____ Costs to be taxed as provided in opinion filed herewith.
_____ Appeal quashed.

BY THE COURT
s/Eleanor R. Valecko
DEPUTY PROTHONOTARY

Appeal

J. 68013/85
IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 44 Pittsburgh 1985
No. 45 Pittsburgh 1985
No. 223 Pittsburgh 1985
JOHN JOSEPH GRABNER, III

Appellant

v

LAWRENCE CONTI and ANTELINE PENDEL

Appeal from Order of the Court of Common Pleas of Beaver County, Civil at No. 2613 of 1981 and No. 2614 of 1981

PANEL CASE

BEFORE: SPAETH, P.J., BROSKY and ROWLEY, JJ.

PER CURIAM: FILED: DECEMBER 20, 1985
Affirmed.

J. 68013/85—1
IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 44 Pittsburgh 1985
No. 45 Pittsburgh 1985
No. 223 Pittsburgh 1985

JOHN JOSEPH GRABNER, III

Appellant

v

LAWRENCE CONTI and ANTELINE PENDEL
Appeal from Order of the Court of Common Pleas of Beaver County, Civil at No. 2613 of 1981 and No. 2614 of 1981

BEST AVAILABLE COPY

Appeal

PANEL CASE
BEFORE: SPAETH, P.J., BROSKY and ROWLEY, JJ.
MEMORANDUM:

This is an appeal from orders sustaining preliminary objections and dismissing two complaints (one in trespass, the other in equity). The complaints allege that Lawrence Conti, with the aid of appellant's sister-in-law, Anteline Pendel, disrupted appellant's marriage. Appellant argues that his complaints allege facts sufficient to state causes of action for causing spousal separation, infliction of emotional distress, and illegal police conduct. Appellant also argues that the trial court improperly dismissed his complaints against Pendel for lack of service. We affirm.

The trial court's opinion adequately disposes of most of appellant's arguments and we need add only two comments. First, appellant's complaints do not state a cause of action for infliction of emotional distress under the Restatement of Torts (Second), §46, because they do not allege in what way appellant suffered as a result of appellees' actions. *Cf. Bartanus v. Lis.*, 332 Pa. Super. 48, 480 A.2d 1178 (1984). And second, while it appears that Pendel was in fact served with a summons, *see* Brief for Appellant at 22-23, this fact does not invalidate the trial court's order dismissing the complaints, for the complaints only briefly allege Pendel's "cooperat[ion] with [Conti] in his attempt to encourage wife to end her marriage with [appellant] and to continue the involvement with him." Complaint in Equity, paragraph 7. As the torts of criminal conversation and alienation of affections have been abolished in Pennsylvania, *see Fadgen v. Lenkner*, 469 Pa. 272, 365 A.2d 147 (1976); *Bartanus v. Lis, supra*, this allegation of "cooperat[ion]" cannot sustain a cause of action.

Affirmed.

Application for Reargument

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT
APPEALS FROM ORDERS OF JUDGE ROBERT C. REED OF THE COURT OF COMMON PLEAS OF BEAVER COUNTY, CIVIL DIVISION WHICH ORDERS WERE ENTERED AT # 2614 OF 1981 AND # 2613 OF 1981 ON NOVEMBER 30, 1984 AND JANUARY 21, 1985

Nos. 44, 45, 223, 230 Pgh 85

JOHN JOSEPH GRABNER, III,
Appellant,

vs.

LAWRENCE CONTI and ANTELINE PENDEL,
Appellees.

APPLICATION FOR REARGUMENT

Filed on Behalf of
John J. Grabner, III

Counsel of Record
for this Party:

Allen N. Brunwasser, Esq.
Pa. I.D. # 099

P. O. Box 22212
Pittsburgh, PA 15222

412-391-0329

I hereby certify the within to be a true and correct copy of the original filed in this case.

/s/Allen N. Brunwasser
Attorney

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APPLICATION FOR REARGUMENT

TO THE HONORABLE, THE PRESIDENT JUDGE AND THE ASSOCIATE JUDGES OF THE SUPERIOR COURT OF PENNSYLVANIA:

Appellant, John Joseph Grabner, III, respectfully represents:

1. That by envelope dated December 19, 1985, this Court's Prothonotary mailed the attached "Per Curiam" order and "Memorandum" opinion, both dated the day after mailing.

2. The said order and opinion do not even list appeal # 230 Pgh 85 which by a July 2, 1985 order of this Court consolidated it with # 44, 45 and 223 Pgh 85 and the argument notices do not list said # 230 Pgh 85 for argument.

POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED BY THE COURT

---

3. The December 20, 1985 opinion does not observe that there are two separate actions filed—one for money damages at # 2614 of 1981 and another for equitable relief at # 2613 of 1981.

Application for Reargument

A. The Equity action is reproduced in the case record at 5-a to 15-a.

B. The Trespass case is reproduced in the case record at 16-a to 20-a.

C. The cases were carried as separate actions in the Beaver County Prothonotary; see docket entries reproduced at 1-a to 4-a.

D. The November 30, 1984 opinion of Judge Reed (Brief, pages 27 to 29) does not notice the difference in relief requested and treats both cases as tort-damage cases instead of also addressing Grabner's request for Equitable relief as presented at # 2613 of 1981.

He wrote no opinion in support of his January 21, 1985 order (Brief, Page 1).

(1) The Superior Court December 20, 1985 opinion does not notice that the equity case claims different relief and also disposes of the entire appeal as a tort matter.

(2) The Superior Court opinion merely concludes "The trial court's opinion adequately disposes of most of appellant's arguments and we need add only two comments" which are about insufficient pleading that was not a ground for dismissal below and not briefed by appellant or argued orally before the panel.

(3) Equitable power to stop Police Chief Conti from beating and threatening Grabner's wife plus other illegal conduct is specifically addressed in Question II (Brief, Pages 15 to 16)

and was argued orally before the adjudication panel.

(4) Failure to even notice this problem in the opinion is, in Grabner's judgment, another indication of what happens because of the Central Legal Staff function in this Court which problem is now pending in two different cases filed by Appellant's Counsel in the Supreme Court of Pennsylvania.

(5) Equity power has not been abolished or restricted by any appeal court decision or statute in this commonwealth so the issue of tort damages in re criminal conversation and/or alienation of affections would not be a bar to the relief requested in # 2613 of 1984.

(6) If Judge Reed (now President Judge) did not write about the above issues and the Superior Court did not expand or express on his views but relied on only what he said, Grabner respectfully suggests a fair and reasonable person could conclude this important to the community peace problem was overlooked, misapprehended or both.

4. When Judge Reed looked dehors the record to make Grabner's complaint an alienation of affections and criminal conversation case, he brought his conduct within the prohibition of *Barbet v. Edelstein,* 1985, Pa. Super. , 499 A.2d 1106 and the Superior Court panel has, by affirming his action, done the same plus violated the rule that one panel will not overrule another panel of this Court; see Pa. R.A.P. 2543 (1)' "Internal Operating Procedures for the Superior Court", II-2, ("A prior decision of a

panel of the court may be overruled by a majority decision of an En Banc Panel"); IV-4-(d).

A. Nothing in Grabner's Equity or Trespass complaints (5-a to 20-a) mentions criminal conversation or alienation of affections.

B. These issues were presented by Conti's preliminary objections in a demurrer (23-a to 24-a, 27-a) and Pendel's demurrer (alienation of affections only, 30-a, 34-a).

C. Judge Reed's November 30, 1984 order in re Conti and his supporting opinion (Brief, Pages 26 to 29) reached out to these preliminary objections and genetically engineered them into what became mutated complaints different from the those which Grabner filed.

D. Judge Reed admitted (Brief, Page 27) this was not "specifically pleaded" and then went on to dismiss Grabner's complaint as though it had been pleaded.

E. The Superior Court by adopting the actions of Judge Reed has compounded the error.

F. This issue should have been raised by Pa. R.C.P. 1030 New Matter. Defendants' failure to properly so proceed and Judge Reed's cooperation, affirmed by this Court, has resulted in an affront to the law as expressed in *Barbet v. Edelstein,* 1985, Pa. Super. , 499 A.2d 1106, 1108-1109 which requires reversal and remand; see also *Jeffries v. Hoffman,* 1965, 207 A.2d 774, F.N.1, 417 Pa. 1, F.N.1 ("Where, as in this case, the rules of law are not clear a court should be especially wary of granting

judgment on the pleadings before the factual underpinnings are well defined").

5. The Superior Court opinion improperly affirmed Judge Reed by sua sponte raising pleading issues not considered by the Court below; (*Kremlow v. Time, Inc.*, 1976, 466 Pa. 189, 352 A.2d 12) and by not allowing Grabner leave to amend in the Superior Court or, by Superior Court order, in the court below which right to amend Grabner now requests.

A. When he dismissed the complaints, solely on the demurrer, Judge Reed said (Opinion, Brief, Page 29):

> "Because we have ruled in favor of Defendant Conti's motion for a demurrer, we need not address the remaining preliminary objections."
>
> "For the foregoing reasons, the following order is entered"

B. Following orderly appeal procedure, Grabner did not brief, present or argue the other preliminary objections which included a motion for more specific facts but did not say what facts were missing, i.e., neither Defendant claimed prejudice because the complaints "do not allege in what way Appellant suffered as a result of Appellees' actions" or the insufficiency of the word "cooperation"; *Bartanus v. Lis*, 1984, Pa. Super. , 480 A.2d 1178, 1186 ("there is no indication, however, that the trial court considered whether the two year statute of limitations barred an action for the intentional infliction of emotional distress nor can we determine whether Appellees advanced this argument in the court below").

C. Grabner respectfully suggests his pleading in the above aspect is sufficient as he is not required to present trial evidence; *Baker v. Rangos*, 1974, 229 Pa. Super. 333, , 324 A.2d 498, 505 (opinion by Judge, now President Judge, Spaeth who said, inter alia, "Evidence from which such facts may be inferred not only need not but should not be alleged").

D. Since insufficient fact problems were not the basis of Judge Reed's decision and, in fact, specifically excluded as a reason, and since Grabner was given no notice this Appeal Court would seize on a new issue until he received its December 20, 1985 opinion, he could not request leave to amend, but requests it now; *Siegle v. U.S. Steel Corp.*, 1982, 302 Pa. 404, 448 A.2d 1104 relying upon *Otto v. American Mutual Insurance Co.*, 1978, 492 Pa. 202, 393 A.2d 450 and other Superior Court decisions; *Flavel v. Susuki Motors LTD.*, 1984, Pa. Super. , 486 A.2d 498, 502 and F.N.3.

E. Grabner's amendment will allege specifically how he was damaged plus the details of Pendel's "cooperation" and, if the Court directs, present the factual material in a formal petition in this Court.

6. In addition, the issues raised in Grabner's brief have not been decided by this Court and they have also been misapprehended.

A. If a husband cannot ask an Equity Court to stop what Conti and Pendel did to him and his wife, violent self help will follow.

B. Also, *Bartanus*, upon which the panel here relied, concerned emotional distress as it applied to a

parent suing his sister and her husband for turning his child against him.

Alienation of affections was specifically excluded as the foundation of the opinion so what was said in re harboring and alienation plus its present posture in Pennsylvania was pure dictum.

C. In addition, *Bartanus*, supports Grabner's argument his case should not be dismissed "as a matter of law" (480 A.2d at 1186) and insufficient pleading (480 A.2d at 1182).

REASONS FOR ALLOWING REARGUMENT

---

7. Grabner respectfully suggests the adjudication panel did not address the issues briefed on appeal, overruled a decision of another panel, raised a new issue not considered by the lower court not raised by Appellant nor argued orally before the Panel so that reargument or /and amendment should be allowed.

A. Grabner also respectfully suggests his appeal raises important issues of significant impact which should not be ignored by the procedures followed in this case.

B. To specifically raise them here would result in verbatim duplication of his appeal brief and go beyond the number of pages allowed by Pa. R.A.P. 2544 (c).

So, the Court is asked to examine the brief and reproduced record before decision.

C. Grabner respectfully objects to the casual manner in which the false claim of no service is brushed aside and the problem of Judge Reed's wife representing his wife ignored (see 62-a to 77-a) especially when now President Judge Reed was host to the adjudication panel, sat with them before arguments began, welcomed them from that location and a former Beaver County Judge sat on the panel.

(1) Grabner's Counsel realizes mention of this type of problem is usually counterproductive, but he asks the Court to examine

(2) *In the Matter of the Disciplinary Proceeding of Phelps,* 1981, C.A. 10, 637 F.2d 171 (lawyer's written representations to Court must be first hand and are examined objectively not on subjective basis of what lawyer believed) and

(3) *Boddie v. Conn.,* 1971, 401 US 371, 91 S.Ct. 780, 788 and

(4) *Ginsburg v. Stern,* 1961, C.A.3, 295 F.2d 698 and

(5) *Gedders v. U.S.,* 1976, 96 S.Ct. 1330, 1336, F.N.3, 425 US 80, 89, F.N.3 and

(6) *Arena v. Luckenbach Steamship Co., Inc.,* 1981, C.A.1, 279 F.2d 186, 188-9 (creation of false issues) and

(7) *Harkin v. Brundage,* 1928, 276 US 36, 48 S.Ct. 268, 275 ("the court must rely on counsel to inform it of the facts").

WHEREFORE, Appellant respectfully requests:

Application for Reargument

A. Reargument en banc.

B. The right to amend.

C. Removal of adjudication panel opinion reference to deficient pleading as Appellees filed no cross appeal and should not receive more here than they did in the lower court; *Algonguin v. SNG, Inc.*, 1976, 426 US 548, 560, F.N.11, 96 S. Ct. 2295, 2302, F.N.11.

Respectfully submitted,
s/Allen N. Brunwasser
Attorney for Appellant

Order, Feb. 14, 1986

The Superior Court of Pennsylvania
Sitting at Pittsburgh

J. Haniel Henry
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

1100 Allegheny Building
Pittsburgh, PA.
15219
(412) 565-7592

February 14, 1986

Allen Brunwasser, Esq.
Gateway Towers
P. O. Box 22212
Pittsburgh, Pa. 15222

In Re: John Joseph Grabner, III, Aplnt. v. Lawrence Conti and Anteline Pendel
Nos. 44, 45 223 and 230 Pittsburgh, 1985

Dear Mr. Brunwasser:

The Court has entered the following order on your application for reargument filed in the above-captioned matters:

ORDER OF COURT

"AND NOW, this 14th day of February, 1986, Appellant's Application for Reargument is DENIED. The captions of the Memorandum and Per Curiam Order filed December 20, 1985 are hereby amended to include docket number 230 Pittsburgh, 1985.

Per Curiam"

Very truly yours,
s/Eleanor R. Valecko
DEPUTY PROTHONOTARY

ERV:bnl
cc: Charles D. Bowers, Jr., Esq.
Roberta C. Higley, Esq.
Hon. Robert Reed

Affidavit at No. 2613

P # 239A1982

2613 of 1981
JOHN GRABNER

Form 96 Sheriff
500 D

The Commonwealth
of Pennsylvania
ALLEGHENY COUNTY ss.:

Personally appeared before me Paul Hoyson a Deputy for Sheriff of Allegheny County, Pennsylvania, who being duly sworn according to law deposed and says that on the 19th day of December 1981 he served Anteline Pendel at 11:39 AM at No. 200 Block of Bendix Dr. Street, Corapolis, Allegheny County, Pennsylvania, with a true and attested copy of the within writ Summons in Equity by handing the same to and leaving with her personally and making known to her the contents thereof.

COSTS: $18.50

s/Sgt. Paul Hoyson
Deputy Sheriff,
Allegheny County,
Pennsylvania

Sworn and subscribed to before me this_____
day of _____, 19____

_____

So Answers
s/Eugene L. Coon
Sheriff, Allegheny County,
Pennsylvania

Affidavit at No. 2614

P # 240A1982

2614 of 1981
JOHN J. GRABNER

Form 96 Sheriff
500 D

The Commonwealth
of Pennsylvania
ALLEGHENY COUNTY ss.:

Personally appeared before me Paul Hoyson a Deputy for Sheriff of Allegheny County, Pennsylvania, who being duly sworn according to law deposed and says that on the 19th day of December 1981 he served Anteline Pendel at 11:39 AM at No. 200 Block of Bendix Dr. Street, Corapolis, Allegheny County, Pennsylvania, with a true and attested copy of the within writ Summons in Trespass by handing the same to and leaving with her personally and making known to her the contents thereof.

COSTS: $18.50

s/Sgt. Paul Hoyson
Deputy Sheriff,
Allegheny County,
Pennsylvania

Sworn and subscribed to before me this_____
day of _____, 19____

_____

So Answers
s/Eugene L. Coon
Sheriff, Allegheny County,
Pennsylvania

Order, Dec. 30, 1986

The Supreme Court of Pennsylvania
Western District

Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, PA
15219
(412) 565-2816

January 5, 1987

Allen N. Brunwasser, Esquire
P. O. Box 22212
Pittsburgh, Pa. 15222

In Re: John Joseph Grabner III v. Lawrence Conti and Anteline Pendel
No. 129 W. D. Allocatur Docket 1986

Dear Mr. Brunwasser:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above matter:

"12/30/86
Denied
Per Curiam"

Very truly yours,
s/Irma T. Gardner
DEPUTY PROTHONOTARY

ITG:cho
cc: Charles Bowers, Jr., Esq.
Roberta C. Higley, Esq.
Hon. Robert C. Reed

Complaint at No. 2613

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

JOHN JOSEPH GRABNER, III, Plaintiff

vs.

LAWRENCE CONTI and ANTELINE PENDEL, Defendants

CIVIL DIVISION

No. 2613 of 1981—in Equity

COMPLAINT IN EQUITY

Code

Filed on behalf of Plaintiff

Counsel of Record for this party:

Allen N. Brunwasser, Esq.
Pa. I.D. # 099
903-B Grant Building
Pittsburgh, PA 15219
(412) 391-0728

CERTIFED TRUE AND CORRECT COPY

Attorney for Plaintiff

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set

forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE—
The Allegheny County Bar Association
920 City-County Building
Pittsburgh, Pennsylvania 15219
Telephone: 412-261-0518

COMPLAINT IN EQUITY

---

1. Plaintiff is a resident of the County of Beaver and the legally married husband of Cecelia Ann Grabner (wife).

2. Lawrence Conti (the Chief) is a resident of the County of Beaver and also the duly appointed Police Chief of Monaca Borough.

3. Anteline Pendel (sister) is a resident of Beaver County and the sister of wife.

4. Plaintiff and wife were married on August 7, 1981 in Hawaii.

Complaint at No. 2613

5. The Chief knew of this marriage shortly after its consummation and also knew plaintiff was the husband.

6. Beginning from the time plaintiff and wife returned from Hawaii to the marital home in Beaver, the Chief began a cause of conduct both intended to satisfy his own amorous and sexual desires with wife and to break up the said marriage, some of which conduct is described as follows:

A. About three weeks after the return, he visited wife at the home of her mother, talked to her, touched her physically, put his hands on her shoulders and his arms around her waist, asked her to do the same to him and said he still cared and could not believe she was married.

B. Shortly thereafter he appeared at the St. Anthony's Club in Midland and invited her to go to sister's house for a 2:30 A.M. breakfast when he knew she was married and living with plaintiff.

C. At that time, the Chief told her he still cared and hugged and squeezed her, held her hand and put his arms around her.

D. About a week later, the Chief showed up at wife's mother's house with sister when he knew plaintiff would be there and embarrassed her before her niece, nephew and the family.

E. On August 27, 1981 wife called the Chief to ask him to let her alone, especially because plaintiff objected, but he refused.

F The Chief admitted to wife that he had given his ex-wife severe beatings including breaking one's

arm as a warning in re how violent he could become if he did not get his own way.

G. In about a week after the above phone call, the Chief came to see wife again at sister's home at which time he criticized plaintiff's conduct toward wife.

H. At that time and place, the Chief held wife's hand and put his arm around her and suggested an attorney, Mr. Martucci, so she could get a divorce and told her how to get to the attorney's office.

I. When wife went to the office of Attorney Martucci, Attorney Joe Budicak, who is in Mr. Martucci's office, was there to take the divorce case and the Chief gave him high recommendation.

J. While wife was still married to plaintiff, the Chief had sexual relations with her, which conduct began sometime shortly after Halloween, 1981, and continued mostly at his house.

K. The Chief became very unpleasant when wife tried to break off the above described relationship and beat her severely to show his displeasure and get her to change her mind; and one time at the Policeman's Ball in Philadelphia for merely talking to another man and his female companion,

(1) he pulled her up the steps to the room which they both had occupied and had sexual intercourse; and

(2) slapped her face hard to hurt her; and

(3) knocked her over the bed; and

(4) bounced her off the walls; and

(5) hit her head against the door so hard that a large lump developed; and

(6) bruised her chin and cheeks with his fists; and

(7) beat and bruised her all over her body; and

(8) told her "Maybe that will teach you a lesson"; and

(9) told her she belonged to him as his "personal property"; and

(10) ripped up a phone number which she wanted to call to escape him and said she was not leaving; and

(11) imprisoned her in the said room under threat of another beating like the one described above which lasted about 15 minutes; and

(12) at all times described in re the beating, the Chief was on official duty and his expenses at the Marriot Hotel, City Line, Philadelphia, Pennsylvania paid by his employer, Monaca Borough; and

(13) when the Chief was pounding wife's head, he knew she had a tumor in it; and

(14) when wife said she wanted to join her minor daughter in Reading, Pennsylvania and return home to Beaver with her, the Chief refused to let her do so and indicated she would receive another beating if she tried; and

(15) wife was afraid to leave both because of the above beating and the Chief's bragging about giving his other women beatings.

L. The Chief was both possessive, jealous and bad tempered.

M. He admitted to wife that while a Monaca policeman, he had beaten both his former wives plus his live-in maid, Janice, with whom he also had sexual relations, and required her to "help out with the house payment from her earnings."

N. Also, the Chief's daughter told wife she too had received beatings from the Chief.

O. When wife went to a December 6, 1983 deposition in this case, the Chief wanted her to get his lawyer to represent her.

P. The Chief ignored plaintiff's request to let his wife alone, which request was made in August 1981.

Q. The Chief gave wife legal advice and also suggested a lawyer to do the same thing.

R. The Chief attempted to break up plaintiff's marriage and told her not to wear her wedding ring.

S. The Chief constantly made wife account for her time.

T. The Chief stayed overnight at wife's home and made love to wife while her 16 year old minor daughter was also there.

U. When wife stayed overnight at the Chief's home, he knew her 16 year old daughter would be

home alone and that what he did was the crime of contributing to a minor's delinquency.

V. The Chief forced wife to clean his home, shop and cook for him, all without pay when he knew this work, in addition to her other obligations was driving her to physical exhaustion which might cause her to become ill.

W. In the winter of 1982, the Chief gave wife a severe beating after trying to force himself, against her desires, into her home. At that time, he also damaged her clothes and jewelry and only stopped when a neighbor told him she was going to call the Beaver police, all of which prevented him from forcing wife into her house where he was so he could beat her. The Chief finally left wife's house after she entered and ran upstairs to escape him and only because the neighbor promised to call said Beaver police.

X. Chief also beat wife at the Baden V.I.D. by giving her a "stooge" in the face under the nose because she was talking to a doctor and then warned her never to talk to any man if he was not there to listen.

Y. The Chief also made wife pregnant when he knew this plus her tumor could endanger her health by refusing to use or let her use anything to prevent it.

Z. Chief then forced wife to continue sex against her desires and without protection against pregnancy.

A1. Chief insisted on having sex with wife after her abortion and before he knew it was allowed.

Complaint at No. 2613

B1. As a result and to protect herself, wife had her tubes tied, as a result of which she and plaintiff can't have any children, even though plaintiff wants children.

C1. One reason wife had her tubes tied is that the Chief said he wanted to have a baby with her.

D1. The Chief embarrassed wife by announcing in public that she was pregnant.

E1. When wife would fall asleep, Chief would wake her up even though he knew she had to go to work that morning.

F1. The above conduct has caused wife to fear the Chief which he wanted so she would do as he said.

G1. The Chief drove slowly in front of a friend's house where wife was a visitor in order to show his displeasure that she was there.

H1. The Chief entered wife's house when she was absent and took back all the gifts he had given her and as punishment for visiting, supra, and again after he saw her with a fellow female employee he took what he had left the first time.

I1. Chief called wife a slut in public.

J1. The Chief, at 5:00 A.M. on August 6, 1983 in the morning removed a flower bed and table he had given her from her lawn.

K1. On the morning when the Chief took the flower bed and table, he ran his truck across wife's lawn to create furrows.

Complaint at No. 2613

L1. Wife feared that if she was home, Chief would have given her another beating.

M1. When wife told the Chief she was ending the relationship, he wished her bad luck and punishment in order to frighten her into continuing the relationship.

N1. The Chief insisted wife return to her house in a Beaver police car and return the presents, wedding dress and ring to plaintiff, all before the marriage.

O1. The Chief asked wife not to be deposed.

P1. The Chief sold a microwave oven plaintiff's parents gave as a wedding gift and kept the money.

Q1. The Chief physically abused wife when she refused to go with him to Las Vegas where he had been a bouncer, and locked her in the basement of his mother's home in order to try to have her change her mind.

7. Sister cooperated with the Chief in his attempt to encourage wife to end her marriage with plaintiff and to continue the involvement with him.

8. All of the above is not only conduct unbecoming a police officer but a nuisance and a continuous trespass.

9. Plaintiff is fearful the Chief will continue his conduct in furtherance of his desire to end plaintiff's marriage and begin again his relationship with wife.

10. The Chief has also made threats to plaintiff and plaintiff is afraid he will carry them out.

Complaint at No. 2613

11. Plaintiff wants the Court to protect him and his wife and his marriage against defendants' improper conduct.

12. Plaintiff has no adequate remedy at law and is, and will continue to be, irreparably damaged and damaged emotionally.

WHEREFORE, plaintiff requests:

A. That defendants appear and answer this Complaint.

B. A preliminary and permanent injunction ordering defendants to stop what has been described above and to let wife and him alone.

C. Other proper relief which the Court believes should be granted after hearing.

s/Allen N. Brunwasser
Attorney for Plaintiff

I, John Joseph Grabner, III, state that I signed this affidavit under penalties of 18 Pa. C.S.A. 4904, and the facts are true and correct.

s/John Joseph Grabner, III

Complaint at No. 2614

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

JOHN JOSEPH GRABNER, III

Plaintiff

vs.

LAWRENCE CONTI and ANTELINE PENDEL

Defendants

CIVIL DIVISION
No. 2614 of 1981—in Trespass
COMPLAINT IN TRESPASS
Code
Filed on behalf of Plaintiff

Counsel of Record for this party:
Allen N. Brunwasser, Esq.
Pa. I.D. # 099
903-B Grant Building
Pittsburgh, PA 15219
(412) 391-0728

CERTIFIED TRUE AND CORRECT COPY
Attorney for Plaintiff

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with

the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE—
The Allegheny County Bar Association
920 City-County Building
Pittsburgh, Pennsylvania 15219
Telephone: 412-261-0518

COMPLAINT IN TRESPASS

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1. All allegations of the Complaint in Equity except the Wherefore clause are incorporated into this Complaint.

2. Plaintiff demands damages for:

A. Defendants' conduct to break up his home.

B. Defendants' conduct dangerous to his wife who he is required and/or privileged to protect by law.

C. The emotional distress caused to him and his wife by defendants' conduct.

D. The Court is also asked to create a common law cause of action for violation of Chief Conti's obligation to conduct himself properly as a policeman within the guidelines of *Faust v. Police C.S.C. of Borough of State College*, 1975, 22 Comth. Ct. 123, 347 A.2d 765 and *Fabio v. C.S.C. of Phila.*, 1980, Pa. , 414 A.2d 82.

3. Plaintiff is damaged in excess of the arbitration limits of this Court.

4. Plaintiff requests punitive damages because of the outrageous conduct described in the Equity Complaint now incorporated into this Complaint.

s/Allen N. Brunwasser
Attorney for Plaintiff

I, John Joseph Grabner, III state that I signed this affidavit under penalties of 18 Pa. C.S.A. 4904, and the facts are true and correct.

s/John Joseph Grabner, III